



Suitability Overview and the INV Form 79A Process

Working for America

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT



Message from the President

“We owe a huge debt of gratitude to those public servants who I like to say quietly stand guard on the ramparts of freedom. We owe something else, as well. We owe all of you a concerted effort to do what it takes to make your efforts more effective.”

- George W. Bush



Message from the Director



“I want to remind you of your responsibility to consider all information obtained from OPM background investigations in making appointments and suitability decisions.”

- Kay Coles James

OBJECTIVES

- **Tips for making sound suitability decisions**
 - How to identify issues & what to consider when you find them
 - OPM's system for consistent decisions
 - When and why to refer a case to OPM
 - Suitability evidence and due process requirements
- **The INV Form 79A**
Report of Agency Adjudicative Action
 - When and how to properly complete it
 - Why we require return of this form
 - What information is available to you from our SII



WHAT ARE “SUITABILITY” ACTIONS?

- Title 5, Code of Federal Regulations, part 731, (5 CFR 731)
 - Applies to competitive service positions
 - Applies to some excepted service if specified in the hiring authority
- 5 CFR 731 Suitability Actions:
 - Cancellation of competitive service applications and eligibilities
 - Debarment
 - May include removal if already employed



AGENCIES HAVE AUTHORITY TO ADJUDICATE:

- Competitive service applicants and appointees (including career SES appts.) **unless** there is evidence of material, intentional falsification or refusal to furnish testimony
- Applicants, appointees, and employees outside OPM's normal jurisdiction (excepted service appts., competitive service appts. not subject to investigation)



OPM RETAINS RESPONSIBILITY TO ADJUDICATE:

- Competitive service applicants, appointees, and employees (including career SES appts.) with evidence of material, intentional falsification or refusal to furnish testimony
- Any “subject to investigation” case (identified by OPM or an agency) in which a general debarment or across agency lines debarment (position performance nexus) is warranted



SUITABILITY VS. QUALIFICATIONS

“Qualifications” determinations are based on an individual’s experience, education, knowledge, skills, and abilities rather than on character traits and conduct.



SUITABILITY VS. SECURITY

- Security adjudication objective - reasonable expectation that employment would be clearly consistent with the interests of national security
- Suitability - examines only personal conduct
- Security goes beyond this to consider other influences such as associates/foreign ties, etc.
- Debarment is benefit of making a suitability determination first



WHAT ARE THE CONSEQUENCES OF AN INADEQUATE SUITABILITY PROGRAM?

If you don't screen or investigate and ignore issues or are inconsistent:

- Risk potential impact of conduct on public safety, national security, agency mission, and public trust
- Consequences of falsification
- Risk reversal on appeal/EEO complaints, etc.



TIPS FOR SOUND ADJUDICATION

The following tips should help you make sound adjudications.



TIP #1

***First, know what a
suitability issue is ...
and what it isn't.***



WHAT IS SUITABILITY?

Identifiable character traits & conduct sufficient to determine whether an individual is likely or not likely to be able to carry out the duties of a Federal job with appropriate integrity, efficiency, and effectiveness.



SPECIFIC SUITABILITY FACTORS

5 CFR 731.202 (b)

- 1. Misconduct or negligence in employment**
Inability to perform & other qualifications issues are not suitability issues.
- 2. Criminal or dishonest conduct**
Financial irresponsibility is only an issue if it rises to dishonesty.
- 3. Material, intentional false statement or deception or fraud in examination or appointment**
“Material” means capable of influencing or having natural tendency to affect official decision. Only OPM can cite this factor in a suitability action.



SPECIFIC SUITABILITY FACTORS

5 CFR 731.202 (b)

- 4. Refusal to furnish testimony as required by § 5.4 of this chapter**
Factor applies only to OPM actions.
- 5. Alcohol abuse**
Does not apply for isolated alcohol-related offenses or if clear evidence of substantial rehabilitation.
- 6. Illegal use of narcotics, drugs, or other controlled substances**
Also does not apply if clear evidence of substantial rehabilitation.



SPECIFIC SUITABILITY FACTORS

5 CFR 731.202 (b)

- 7. Knowing and willful engagement in acts or activities designed to overthrow the U. S. government by force**
Must be an overt act. Membership in an organization, alone, is not disqualifying.
- 8. Any statutory or regulatory bar which prevents the lawful employment of the person involved in the position in question**
There must be a specific legal restriction to employment.



TIP #2

Carefully consider any mitigating or aggravating conditions.



ADDITIONAL CONSIDERATIONS

5 CFR 731.202 (c)

1. Nature of the position
2. Nature and seriousness of the conduct
3. Circumstances surrounding the conduct
4. Recency of the conduct
5. Age of person at time of conduct
6. Contributing societal conditions
7. Absence or presence of rehabilitation or efforts toward rehabilitation



INDICATORS OF REHABILITATION

- **Time elapsed since conduct last occurred (no set time frame - must be considered in tandem with other factors)**
- **Results of treatment/counseling- Prognosis and past history of treatment**
- **Other aspects of the individual's life such as stable employment record, positive changes in personal life, etc.**

Rehabilitation considerations apply to all factors



TIP #3

Identify suitability issues when the subject is still an applicant.



APPLICANT SCREENING

- **Subject completes Declaration for Federal Employment (OF 306) after agency determines among best qualified**
- **Personnel/HR/Hiring Official screens 306 and other pre-appointment inquiries, etc. for potential suitability issues**
- **SOI may request OPM SII check**
- **Personnel/HR/Hiring Official refers to agency Adjudications Office if potentially disqualifying**



TIP #4

Be consistent in your approach to adjudication.



OPM's ADJUDICATION MATRIX

- Adds objectivity and consistency
- Eliminates arbitrary, capricious decisions

HOWEVER

The decision matrix is only a tool and the first step in adjudication



SUITABILITY ADJUDICATION

Three Stages of Adjudication

1. Basic Suitability Adjudication
2. Position Risk Adjudication
3. Position Performance Adjudication



BASIC SUITABILITY ADJUDICATION

STEP ONE

List and characterize the
suitability issues



ISSUE SERIOUSNESS CHARACTERIZATION

RANKING	SERIOUSNESS	POTENTIAL DISQUALIFICATION
		<i>Conduct or issue which, <u>STANDING ALONE</u>,</i>
A	Minor	Would not be disqualifying
B	Moderate	Would probably not be disqualifying
C	Substantial	May probably be disqualifying
D	Major	Would be disqualifying



BASIC SUITABILITY ADJUDICATION

STEP TWO

Determine the recency and frequency of issues



BASIC SUITABILITY ADJUDICATION

CONTROL DATE

TYPE OF CASE

CONTROL DATE

Civil Service Register
or Outside Civil Service
Register

Date of OF 306 or
Referral

Investigated applicant

Date of investigative
data form

Appointee or Employee

Date conduct identified



BASIC SUITABILITY ADJUDICATION

FREQUENCY UPGRADE

FREQUENCY

UPGRADE ACTION

2 Issues in 0-36 Months

**Raise both issues once
(e.g., “A” to “B”)**

**3 or More Issues
in 0-36 Months**

**Raise all issues twice
(e.g., “A” to “C”)**



BASIC SUITABILITY ADJUDICATION

SUITABILITY DOWNGRADE (CONVERSION)

ISSUES

Period in which issues occurred

0-36 Months

37-72 Months

73-108 Months

B		B	A	Non-Issue
C	<i>Converts to</i>	C	B	A
D		D	C	B

*NOTE: Anything over 108 months
is a non-issue under basic suitability.*



BASIC SUITABILITY ADJUDICATION

STEP THREE

Determine the length of debarment that could be imposed



BASIC SUITABILITY ADJUDICATION

POTENTIAL DEBARMENT

Recency

	0 to 12 Months	13 to 24 Months	25 to 36 Months
<i>Issues</i>			
C	24 Mo. Debar	18 Mo. Debar	12 Mo. Debar
D	36 Mo. Debar	24 Mo. Debar	18 Mo. Debar



BASIC SUITABILITY ADJUDICATION

Control Date	Date of Conduct	Time Elapsed	Issue	Charac	Upgrade	Down-grade
11-17-03	10-10-03	1 mo	Disturbing the Peace	A	 C 24 mo bar	
	5-15-03	6 mo	Possession of Cocaine	B	 D 36 mo bar	
	11-20-00	36 mo	Discharge-Rules/Regs. violation	B	 D 18 mo bar	
	12-1-86	17 yrs.	Arson	D		N/I



POSITION RISK ADJUDICATION

(considers kind of position/position risk designation)

- Assess impact of conduct in terms of specific position's risk level
- Accord greater seriousness to issues for positions with High or Moderate Risk duties
- Establish adverse connection between conduct and Public Trust duties or Agency mission



POSITION PERFORMANCE ADJUDICATION

(considers specific duties of position)

- Assess impact of conduct in terms of **nexus** (connection between conduct & specific duties)
- Conduct may be disqualifying if :
 - Potential improper/inadequate performance
 - Potential immediate or long-term risk to integrity & efficiency of the service/abuse of public trust



TIP #5

*Know when to send a case to OPM
for adjudication.*



OPM DEBARMENT

- Only OPM has authority to take a general debarment action affecting all applications and eligibilities in the competitive service (across agency lines - up to 3 years in length.)
- Agencies should refer to OPM:
 - Material, intentional falsification cases
 - Other very serious, recent issues
 - “Nexus” cases for particular types of positions warranting across agency lines debarment



MATERIAL, INTENTIONAL FALSIFICATION REFERRALS

- Under 5 CFR 731, OPM retains jurisdiction on material, intentional falsification involving competitive service applicants, appointees, and employees
- Refer competitive service applicant cases with material falsification to OPM (even if you can non-select)
- Discuss appointee or employee cases with OPM before taking an action under other authority



WHEN DOES “MATERIAL, INTENTIONAL FALSIFICATION” APPLY?

Documents and/or interviews as part of the examination or appointment process:

- Application forms
- Appointment forms
- Interviews/examinations
- Investigative data forms
- Personal Subject Interview (PRSI)



DEFINITION OF “MATERIAL”

“Capable of Influencing”
“Natural Tendency to Influence”

OFFICIAL DECISION

SUITABLE?

QUALIFIED?

MEDICALLY FIT?

BEST CANDIDATE?

ELIGIBLE FOR CLEARANCE?



MATERIAL FALSIFICATION

- Does not rest on whether or not the false statement was relied upon to make a hiring decision
- Hindsight is 20/20
- Bottom line - what is reasonable?



MATERIAL FALSIFICATION EXAMPLES

- “C” or “D” within 36 months not admitted
 - Recent
 - Serious
 - Would result in suitability disqualification
- Increased potential debarment
 - More serious than admitted issues alone
 - More recent than admitted issues



MATERIAL FALSIFICATION EXAMPLES (continued)

- Significantly contributes to a pattern (longer or more recent)
- New type of conduct
- Unadmitted conduct is directly related to the specific position sought
 - Position nexus
 - Agency mission, Public Trust
 - Position sensitivity



POSITION RISK/POSITION PERFORMANCE ADJUDICATION OPM DEBARMENT REFERRAL EXAMPLES:

- Law Enforcement positions - sale of narcotics
- Fiduciary positions - embezzlement
- Motor Vehicle Operator - habitual traffic offender
- Computer Security Manager - using company computer to access porn sites
- Staffing Specialist - prohibited personnel practices

NOTE: LIST IS NOT ALL INCLUSIVE!



OPM'S ACTION:

- Assume jurisdiction and propose and implement debarment action, ***or***
- Notify the agency that general debarment by OPM is not warranted and return case for agency to complete action, ***or***
- Request agency to obtain additional information



TIP #6

*Evidence
is everything.*



WEIGHT OF EVIDENCE

To meet the standard of “Preponderant,” the evidence in a suitability case must be such that a reasonable person would accept it as sufficient to find a contested fact **more true than untrue**

VS.

Criminal standard - “beyond a reasonable doubt”



WEIGHT OF EVIDENCE (continued)

The weight of evidence and credibility of sources is carefully evaluated at MSPB

- **Admissions on forms, alone, are not sufficient**
- **Minimum evidence - signed statement by subject outlining details of conduct (witnessed and/or notarized)**
- **Disputed issues - obtain records, signed statements, multiple source testimonies, or call witnesses for the MSPB hearing**



AGENCY OPTIONS WHEN MORE INFORMATION IS NEEDED:

- **Contact the subject for information**
 - Obtain signed, witnessed statement
- **Contact sources directly**
 - Court, probation officer, employers, etc.
 - Ensure sources are advised of Privacy Act Rights
- **Request pre-employment investigation or RSI from OPM**



TIP #7

Understand and follow the requirements of 5 CFR 731.



NOTICE OF PROPOSED ACTION

- Gives reasonable notice to subject in writing, stating specific reasons
- Notifies subject of right to “materials relied upon”
- Informs respondent of time limits for response and right to respond in writing
- Retains subject in pay status during response time, if employed



RESPONDENT'S ANSWER

Respondent has the right to answer charges in writing and furnish documentation and/or affidavits in support of response.



DECISION

- Issue a written, dated decision and inform respondent of reasons for decision
- Give appeal rights to MSPB
- Remove within 5 workdays following the date of the decision



AGENCY DEBARMENT ACTION

- 5 CFR 731.205 gives agencies authority to bar for up to one year
- Agency decision precludes appointment to all or certain positions within the agency only
- Agency takes action when case does not meet guidelines for referral to OPM (OPM can bar from all competitive positions for three years)
- Agency must enforce debarment



INV 79A COMPLIANCE AND BENEFITS

The following information will provide you with an overview of the Inv Form 79A process and how your agency can benefit from the data collected from submitted Inv Form 79A's.



WHAT IS AN INV FORM 79A, AND WHAT SHOULD I DO WITH IT?

- OPM advises agency of overall case seriousness characterization
- Agency must return showing adjudication within 90 days (if so noted on the form)
- OPM enters agency adjudication in SII
- OPM-SAB coordinates “D” issues with agency
- OPM may contact agency if form is not returned within time requested and/or action is inappropriate



REPORT OF AGENCY ADJUDICATIVE ACTION ON OPM PERSONNEL INVESTIGATIONS U.S. Government Use Only

MARKING INSTRUCTIONS

CORRECT MARK:



- USE A NO. 2 PENCIL OR BLUE OR BLACK INK PEN ONLY.
- DO NOT USE PENS WITH INK THAT SOAKS THROUGH THE PAPER.
- DO NOT MAKE ANY STRAY MARKS ON THIS SHEET.

INCORRECT MARKS:



ATTACHED TO THIS FORM IS INVESTIGATIVE MATERIAL COMPILED BY OPM ON THE FOLLOWING PERSON:

NAME: _____ DOB: _____ SENSITIVITY: _____
SSN: _____
POSITION: _____
AGENCY: _____

CASE NUMBER									
0	0	0	0	0	0	0	0	0	0
1	1	1	1	1	1	1	1	1	1
2	2	2	2	2	2	2	2	2	2
3	3	3	3	3	3	3	3	3	3
4	4	4	4	4	4	4	4	4	4
5	5	5	5	5	5	5	5	5	5
6	6	6	6	6	6	6	6	6	6
7	7	7	7	7	7	7	7	7	7
8	8	8	8	8	8	8	8	8	8
9	9	9	9	9	9	9	9	9	9

USING PROCEDURES ESTABLISHED BY 5 CFR 731, PERSONNEL SUITABILITY, OPM HAS MADE THE FOLLOWING CASE ISSUE CHARACTERIZATION:

Send Completed Form to this Address

DATE OF OPM DETERMINATION:

UNDER THE PROVISIONS OF 5 CFR 731 AND 732, YOU ARE REQUIRED TO REPORT TO OPM YOUR FINAL ADJUDICATION ACTION. SEND COMPLETED FORM TO:

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
FEDERAL INVESTIGATIONS PROCESSING CENTER
PO BOX 618
BOYERS, PA 16018-0618

Fill in Date of Adjudication Here

MARK THE OVAL CORRESPONDING TO THE ADJUDICATIVE ACTION YOU TOOK ALONG WITH THE OVALS TO THE RIGHT CORRESPONDING TO THE DATE OF ADJUDICATION. Fill in the oval completely. Do not make any stray marks on this form.

- (1) FAVORABLE DETERMINATION WAS MADE. (Person was not contacted.)
- (2) FAVORABLE DETERMINATION WAS MADE. (Person was contacted.)
- (3) FAVORABLE DETERMINATION WAS MADE. (Person was contacted.)
- (4) RESIGNED, WAS TERMINATED
- (5) NOT APPOINTED BASED ON SUITABILITY
- (6) REMOVED, BASED ON SUITABILITY
- (7) PERSON COUNSELED AND REINSTATED
- (8) PERSON RETAINED, BUT SUSPENDED FOR 14 DAY
- (9) SUSPENDED FOR 15 DAY
- (10) OTHER ACTION WAS TAKEN

Fill in Adjudicative Action Code Here

CASE TYPE	FIPC USE	ISSUE CODE
0	0	0
1	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9

<input type="radio"/> MAR	0	0	0
<input type="radio"/> APR	1	1	1
<input type="radio"/> MAY	2	2	2
<input type="radio"/> JUNE	3	3	3
<input type="radio"/> JULY	4	4	4
<input type="radio"/> AUG	5	5	5
<input type="radio"/> SEPT	6	6	6
<input type="radio"/> OCT	7	7	7
<input type="radio"/> NOV	8	8	8
<input type="radio"/> DEC	9	9	9

PLEASE NOTE: IF ADDITIONAL DOCUMENTATION (SUCH AS AGENCY CONDUCTED INQUIRIES, DUE PROCESS, ETC.) WAS USED TO ADJUDICATE THE CASE, ALL COPIES OF THAT DOCUMENTATION SHOULD BE ATTACHED TO THIS FORM AND FORWARDED TO THE ADDRESS SHOWN ABOVE.

ADJUDICATED BY: _____ (PLEASE PRINT) _____ DATE _____
SIGNATURE OF ADJUDICATING OFFICIAL: _____ TELEPHONE NO. _____

Sign and Date Form Here



MOST COMMON PROBLEMS WITH Inv Form 79A's

- Inv Form 79A is returned but adjudicative action not shown
- Agency marks more than one adjudication (Example: both “favorable determination” and “counseled” marked)
- Forms are not returned within 90 days, when required



WHY IS RETURN OF THE INV Form 79A SO IMPORTANT?

- **OPM investigations frequently develop serious issues (serious criminal acts, patterns of employment problems, falsification of pertinent facts, etc.)**
- **Serious issues must be dealt with promptly and effectively**
- **Everyone responsible for adjudication plays an important role in protecting our homeland security**
- **OPM uses the information to evaluate the effectiveness of personnel security programs**
- **OPM does not release the file until the agency's adjudication is known**
- **An agency's adverse adjudication will extend the life of the file**



RELATED AUTHORITIES

- E.O.10450 gives OPM primary responsibility for conducting investigations and establishes our Security Investigations Index (SII)
- 5 U.S.C. 301 provides agencies authority to prescribe regulations regarding use of our records
- 5 CFR 731 requires agencies to report all adjudicative actions based on OPM investigations



HOW CAN INV Form 79A DATA BENEFIT ME?

- Reports are readily available from the SII, upon request by agency security offices, to provide:
 - Number of adjudicative reports returned by the agency
 - Actions taken for each seriousness level
 - Information is available by agency or issue code
- The Inv Form 79A data can be a valuable resource for agencies to help manage security issues, identify inconsistencies in adjudicative decisions, and determine staff training needs



HOW CAN I GET MORE TRAINING ON SUITABILITY ADJUDICATION?

The USDA Grad school provides a suitability training course developed by OPM:

www.grad.usda.gov

If you need immediate assistance in a specific area, contact your agency's Investigations Program Specialist @ (202) 606-1042



WHO SHOULD I CONTACT FOR INV Form 79A DATA FROM THE SII?

**Contact the Adjudications Oversight
Team @ (724) 794-5612 for
Inv Form 79A statistical information**



WHO SHOULD I CONTACT ABOUT POSSIBLE MATERIAL FALSIFICATION CASES?

(e.g., competitive service case in which OPM conducted an investigation, but the case was not closed as a “D” , etc.)

Call or write OPM @:

OPM-FIPC-SAB
P.O. Box 618
1137 Branchton Road
Boyers, PA 16018-0618
(724) 794-5612



CONTACT INFORMATION

**For more information,
Visit us on the web at**

www.opm.gov

www.opm.gov/extra/investigate

**Call or write OPM's
Center for Federal Investigative Services**

Customer Service Group:

(202) 606-1042

Suitability Adjudications Branch:

(724) 794-5612

OPM-FIPC-SAB

P.O. Box 618

1137 Branchton Road

Boyers, PA 16018-0618

